IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA,	:	
	:	
v.	:	**Case No. 1:18-CR-45 (WLS)**
	:	
WILLIE WARE,	:	
	:	
Defendant.	:	
	:	

ORDER

Before the Court are Defendant Willie Ware's Motions to Suppress (Docs. 31 & 34). For the following reasons, Ware's Motions to Suppress are **DENIED**.

PROCEDURAL BACKGROUND

On September 11, 2018, Defendant was indicted on one count of possession of methamphetamine with intent to distribute and one count of possession of a firearm in furtherance of a drug-trafficking crime. (Doc. 1.) On March 22, 2019, Defendant moved to suppress "any and all evidence, statements and observations of the officers that were obtained as a result of the illegal seizure of Mr. Ware." (Doc. 31 at 1.) On April 16, 2019, Defendant moved to suppress statements obtained by officers after he was arrested, arguing that they were obtained in violation of *Miranda*, as a result of undue police coercion, and in violation of Fed.R.Crim.P. 5(a) and 18 U.S.C. § 3501(c). (Doc. 34.) The Government responded to both motions (Docs. 33 & 35), and on May 8, 2019, the Court held a hearing on the motions. (*See* docket.) Following the hearing, Defendant filed a supplemental brief, the Government filed a supplemental response, and Defendant filed a supplemental reply. (Docs. 48, 49, 51.) Accordingly, the motions to suppress are ripe for review.

FACTUAL FINDINGS

At the May 8, 2019 hearing on Defendant's Motions to Suppress, the Government presented four witnesses and its seven exhibits were admitted without objection. (*See* Doc. 43.) Defendant presented one witness and its two exhibits were admitted without objection. *Id.*

Upon reviewing the exhibits, witnesses' testimony, and Parties' arguments, the Court makes the following findings of fact.

On the evening of November 23, 2017, Deputy Drake Brann of the Lee County Sheriff's Office pulled over a pick-up truck being driven by Ware because it appeared to be operating with unlawful spotlights on. Brann believed that two casein spotlights were illuminated while Ware was driving and that it was illegal to drive with those lights on. When Brann approached Ware to inform him that he had pulled him over for having on casein lights, Ware responded that he had just turned off the two LED lights in the middle of his truck's grill. After pulling over the truck, officers never went to look at the spotlights on the front of the car.

Brann asked for Ware's driver's license and returned to his car to run a check on Ware's driver's license and car tag, and dispatch reported that the license was valid and that there were no warrants on the vehicle or for Ware. Meanwhile, while the check was being conducted, officers Chris Harnage and Eddie Burgess arrived on the scene and approached Ware's vehicle, and determined that he was the only occupant of the truck. Within approximately two minutes, Harnage stated that he observed a knife in the passenger's seat and asked that Ware step out of the vehicle. After Ware stepped out, officers observed a gun in the door of the truck and placed Ware in handcuffs. After Ware stated that officers could retrieve the gun but not search the vehicle, officers also observed marijuana in the door of the truck. Officer Burgess then informed Ware of his *Miranda* rights, Ware responded that he understood, and Burgess explained that if he asked Ware a question, Ware did not have to respond. The truck was then searched, and officers found crystal methamphetamine. Thereafter, Ware was interviewed multiple times before which he was Mirandized and signed a waiver of his *Miranda* rights.

DISCUSSION

A. Validity of the Traffic Stop

"A traffic stop… 'is constitutional if it is either based upon probable cause to believe a traffic violation has occurred or justified by reasonable suspicion in accordance with *Terry* [*v. Ohio*, 392 U.S. 1 … (1968)].'" *United States v. Spoerke*, 568 F.3d 1236, 1248 (11th Cir. 2009) (citation omitted); *United States v. Whitlock*, 493 F. App'x 27, 30 (11th Cir. 2012) ("[T]he decision to stop an automobile is [generally] reasonable where the police have probable cause

to believe that a traffic violation has occurred.") (quoting *Whren v. United States*, 517 U.S. 806, 810 (1996)). "Law enforcement may stop a vehicle when there is probable cause to believe that the driver is violating any one of the multitude of applicable traffic and equipment regulations relating to the operation of motor vehicles." *United States v. Spoerke*, 568 F.3d 1236, 1248 (11th Cir. 2009). The test is "whether probable cause existed to justify the stop," not "whether a police officer, acting reasonably, would have made the stop for the reason given." *Whren*, 517 U.S. at 810, 818 (so finding notwithstanding defendants' argument that expansive traffic laws are "so difficult to obey perfectly that virtually everyone is guilty of violation").

Georgia law provides that "[e]very motor vehicle other than a motorcycle or motor driven cycle shall be equipped with at least two but not more than four headlights, with at least one on each side of the front of the motor vehicle, which headlights shall comply with the requirements and limitations set forth in this article." O.C.G.A. § 40-8-22(a). Furthermore,

> Any motor vehicle may be equipped with not to exceed one spotlight, and no lighted spotlight shall be aimed and used upon any approaching vehicle. It shall be unlawful for any person except law enforcement officers and persons licensed under Chapter 38 of Title 43 to operate a spotlight from any moving vehicle on any highway or public roadway.
>
> O.C.G.A. § 40-8-29(a)

Based on these statutes, Brann could reasonably be correct that it is unlawful in Georgia for a driver to have two spotlights operating on his car while driving on a public road. Here, Brann testified that he believed he observed two spotlights operating on Ware's truck at the time of the traffic stop, and when pulled over, Ware did not dispute Brann's observation but merely stated that he had just turned off the LED lights. Courts have found stops lawful when the circumstances objectively indicated that the driver was violating this or similar statutes. *See, e.g.*, *United States v. Johnson*, No. CR 108-055, 2008 U.S. Dist. LEXIS 114241, at *5 (S.D. Ga. July 30, 2008) ("[T]here is no question that Deputy Perkins had not only a reasonable suspicion, but also probable cause, to stop Defendant's car" for driving with an inoperable headlight)); *United States v. Moore*, No. 2:06-cr-8-FtM-29SPC, 2006 U.S. Dist. LEXIS 28581, at *6 (M.D. Fla. May 5, 2006) ("Officer Derrig clearly had probable cause to stop the vehicle because of the inoperative tag light and the failure to properly light the tag.") Even if Brann

had other motivations in initiating the traffic stop, "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis." *Whren*, 517 U.S. 806, 813 (1996).

Moreover, Defendant's argument that there is no evidence that the alleged spotlights were not actually spotlights is unavailing. Brann testified that he observed what he believed to be two casein spotlights on the front of Ware's truck while Ware was driving, and that he believed they were casein spotlights based on his familiarity with the size, shape, and brightness of such lights. (Doc. 47 at 16:15-18, 22:17-23:6). Brann testified that a spotlight remains a spotlight even if it is mounted on someone's car for a different purpose. (Doc. 46:25-47:11.) Defendant's arguments to the contrary are just that – arguments, not evidence. "The proponent of a motion to suppress has the burden to allege, and if the allegations are disputed, to prove, that his own Fourth Amendment rights were violated by the challenged search or seizure." *United States v. Jackson*, 618 F. App'x 472, 474 (11th Cir. 2015). Ware has failed to do so.

It is sufficient that Brann's credible testimony evidenced a lawful basis to stop Ware's truck. There is no evidence on which this Court can question Brann's observations or conclusions about the nature of the lights on Ware's trucks. Further, because "great deference is given to the judgment of a trained law enforcement officer on the scene," the Court will defer to Brann's opinion of what he saw before the video recording began. *Whitlock*, 493 F. App'x at 29 (internal quotation marks and citation omitted). "For the run-of-the-mine case, which this surely is, we think there is no realistic alternative to the traditional common-law rule that probable cause justifies a search and seizure." *Whren*, 517 U.S. at 819. Thus, based on the evidence presented, the Court must conclude that the traffic stop of Ware's vehicle was lawfully based on reasonable suspicion or probable cause that two spotlights were on while the vehicle was operating on the road, in violation of O.C.G.A. § 40-8-29(a).

B. Extension of Traffic Stop and Search of Ware's Truck

For a stop to remain lawful, it must be "reasonably related in scope to the circumstances which justified the interference in the first place" and "may not last any longer than necessary to process the traffic violation unless there is articulable suspicion of other illegal activity." *United States v. Boyce*, 351 F.3d 1102, 1106 (11th Cir. 2003) (internal quotation marks and citations omitted). An officer may only prolong a traffic stop "in special

circumstances," such as: (1) "to investigate the driver's license and the vehicle registration," including by computer check, (2) in the interest of officer safety, to await the results of a criminal history check that is part of the routine traffic investigation, and (3) if he has "articulable suspicion of other illegal activity." *Id.* (quoting *United States v. Purcell*, 236 F.3d 1274, 1277-78 (11th Cir. 2001)). During a lawful traffic stop, officers may also take steps that are "reasonably necessary to protect their personal safety," including requiring the driver and passengers to exit the vehicle "as a matter of course." *United States v. Spoerke*, 568 F.3d 1236, 1248 (11th Cir. 2009) (citing *Purcell*, 236 F.3d at 1277)).

Here, after informing Ware of the reason for the stop, Brann asked for Ware's license and then immediately went to check Ware's driver's license and vehicle information. While this check was being run, officers Harnage and Burgess asked Ware to step out of the truck after observing a knife in his passenger seat. After Ware exited his vehicle, Burgess also observed a gun in the driver's door. Officers then handcuffed Ware and asked for permission to search the vehicle. Ware responded that they could take the gun but not search his truck. As Burgess looked into the driver's door with a flashlight, he also observed marijuana and stated that he had probable cause to search the car. This all happened very quickly – less than three minutes after approaching Ware's truck, Burgess observed the marijuana.

Defendant argues that "the Officers unjustifiably prolonged the traffic stop by placing Mr. Ware in handcuffs, asking him to search his truck, and subsequently searching the map pocket without his consent." (Doc. 48 at 12.) Defendant also argues that their actions exceeded the purpose of the stop, which was presumably to investigate the casein spotlights, which the officers never inspected. *Id.* at 11. The Government argues that the Court should disallow Defendant's argument that the stop was unlawfully prolonged because that argument was not timely made in Defendant's motion to suppress; alternatively, the Government asks that the Court require Defendant to show good cause for his untimely argument. (Doc. 49 at 9-10.) Defendant's motion to suppress in this case was bare-bones and provided a two-sentence argument that the traffic stop in this case was unconstitutional.[1] As such, it is not entirely clear

[1] The Court notes that based on the motion presented here, a hearing was not likely required. *United States v. Cooper*, 203 F.3d 1279, 1284 (11th Cir. 1985) ("'A motion to suppress must in every critical respect be sufficiently definite, specific, detailed, and nonconjectural to enable the court to conclude that a substantial claim is presented. . . . A court need not act upon general or conclusory assertions. . . .'") (citation omitted).

what arguments Defendant sought to raise in support of his motion to suppress, and the Court will not reach the issue of whether or not the argument is untimely because a timely motion to suppress was filed and sufficient evidence has been presented for the Court to find that the stop was not unlawfully prolonged.

Officers may take "such steps as are reasonably necessary to protect their personal safety." *United States v. Purcell*, 236 F.3d 1274, 1277 (11th Cir. 2001). "This includes conducting a protective search of the driver, the passengers, and the vehicle. The officer may seize any contraband, including weapons, in plain view. The officer may use a flash light to illuminate a vehicle's dark interior. The officer may also prolong the detention to investigate the driver's license and the vehicle registration, and may do so by requesting a computer check." *Id.* (citations omitted). Courts "cannot blind [them]selves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest." *Terry v. Ohio*, 392 U.S. 1, 24 (1968). As such, officers are allowed to take various reasonable actions "to neutralize the threat of physical harm." *Id.* Thus, the officers here acted reasonably in ordering Ware out of the car for officer safety after observing a knife within his reach and then handcuffing him and asking to search his truck after observing a gun within his reach.[2] *See, e.g.*, *United States v. Aguirre-Sanchez*, No. 2:15-CR-00013-RWS-JCF, 2015 U.S. Dist. LEXIS 174677, at *13 (N.D. Ga. Nov. 23, 2015) (finding that "the deputies acted reasonably in handcuffing both men" for safety reasons where a knife was involved); *United States v. Santos*, No. 1:11-CR-259-WBH-CCH, 2012 U.S. Dist. LEXIS 79252, at *15 (N.D. Ga. Apr. 24, 2012) ("For their own personal safety, police officers may draw their weapons and handcuff suspects during a *Terry* stop without necessarily transforming the stop into a *de facto* arrest requiring probable cause."); *United States v. Crump*, No. 4:10-CR-032-03-HLM, 2011 U.S. Dist. LEXIS 142363, at *18 (N.D. Ga. Dec. 12, 2011) ("During a traffic stop, an officer may . . . remove the driver from the vehicle, and may 'pat down' a suspect for weapons," and "may ask permission to search the vehicle.") (citing cases). Further, not only did Ware consent to allow the officers to take his gun, but Officer Burgess was justified in retrieving Ware's gun for safety reasons. *United States v. Johnson*, 921 F.3d 991, 1001

[2] Indeed, Officer Burgess testified that they decided to handcuff Ware "to prevent his ability to utilize any of the weapons that were there." (Doc. 47 at 46:3-11.)

(11th Cir. 2019) ("Handcuffs do not always work, and suspects have been known to reach for weapons even when handcuffed.") (citing *Michigan v. Long*, 463 U.S. 1032, 1051 (1983)). Burgess did not unlawfully search Ware's truck, but merely went to the driver's door to retrieve the gun, and when he did, he observed a jar containing marijuana. Under the plain view doctrine, "if contraband is left in open view and is observed by a police officer from a lawful vantage point, there has been no invasion of a legitimate expectation of privacy and thus no 'search' within the meaning of the Fourth Amendment." *United States v. Burch*, 2010 U.S. Dist. LEXIS 33842, at *8, 2010 WL 1378039 (S.D. Ga. Feb. 11, 2010) (quoting *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993)). Once Burgess lawfully observed marijuana, he had probable cause to arrest Ware and search Ware's vehicle. *United States v. Brown*, No. CR 105-124, 2006 U.S. Dist. LEXIS 15232, at *22 (S.D. Ga. Feb. 23, 2006) ("[T]he discovery of the marijuana provided probable cause to search the vehicle for additional contraband."); *United States v. Williams*, 731 F. App'x 863, 868 (11th Cir. 2018) ("It is well settled that detection of the odor of marijuana furnishes probable cause to search a vehicle."); *United States v. Edwards*, 307 Fed. Appx. 340, 344 (11th Cir. 2009) (per curiam) (unpublished) (affirming ruling that officer's observation in plain view of bag of marijuana in defendant's vehicle provided probable cause to search vehicle pursuant to the automobile exception). Thus, the Court must conclude that the officers' actions here did not violate the Fourth Amendment.

Finally, Defendant also moved to suppress statements made following his arrest on the basis that they were "the result of undue police coercion," "were obtained in violation of Rule 5(a) of the Federal Rules of Criminal Procedure and in violation of 18 U.S.C. § 3501(c)," and "were made during an actual subjective expectation to negotiate a plea." (Doc. 34 at 2.) Defendant presented no further argument on this issue in his initial motion nor in his supplemental briefing, and as such, this cursory argument is effectively waived. *Carrel v. AIDS Healthcare Found., Inc.*, 898 F.3d 1267, 1279 (11th Cir. 2018) ("[A]rguments briefed in the most cursory fashion are waived.") (citation omitted). Moreover, the evidence presented at the suppression hearing indicated that Ware voluntarily waived his *Miranda* rights before making statements to the officers and that the statements were not otherwise obtained in violation of Rule 5(a) or section 3501(c), and therefore, the Court has no reason to suppress any of Ware's custodial statements.

C. Exclusionary Rule and Good Faith

Even where a Fourth Amendment violation has occurred, the United States Supreme Court has made it clear that the suppression or exclusion of evidence is *not* "a personal constitutional right" designed to "'redress the injury' occasioned by an unconstitutional search." *United States v. Smith*, 741 F.3d 1211, 1218 (2013) (quoting *Davis v. United States*, 131 S. Ct. 2419, 2426 (2011)). Its "sole purpose" is "to deter future Fourth Amendment violations." *Id.* at 1218-19 (citing *Davis*, 131 S. Ct. at 2432). For this reason, exclusion is "a remedy of 'last resort,' justified *only* where the 'deterrence benefits of suppression' outweigh the 'substantial social costs' of 'ignoring reliable, trustworthy evidence bearing on guilt or innocence.'" *Id.* (quoting *Davis*, 131 S. Ct. at 2427). Given the exclusionary rule's purpose, "evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional." *United States v. Leon*, 468 U.S. 897, 919 (1984) (citing *United States* v. *Peltier*, 422 U.S. at 542) (holding that evidence need not be suppressed where the officers' actions were objectively reasonable). Because the exclusionary rule "necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct," "[w]here the official action was pursued in complete good faith, [] the deterrence rationale loses much of its force." *United States* v. *Peltier*, 422 U.S. 531, 539 (1975) (citation omitted).

The Defendant has not cited, and the Court is not aware of, any law clearly establishing that the officers' conduct here was unlawful. *United States v. Williams*, 871 F.3d 1197, 1203 (11th Cir. 2017) (affirming denial of motion to suppress where "Defendant [] cites no precedent establishing a constitutional violation under these circumstances.") Rather, "[i]n determining whether an officer has conducted a reasonable search and seizure, 'the essence of all that has been written is that the totality of the circumstances - the whole picture - must be taken into account.'" *United States v. Clark*, 337 F.3d 1282, 1286 (11th Cir. 2003) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). Therefore, where the officers' actions appear to be objectively reasonable when considering the totality of the circumstances facing the officers at the time, suppression is not warranted. *See Williams*, 871 F.3d at 1203.

Here, the officers had reason to believe that two of the lights illuminated on the front of Ware's truck were casein spotlights and that it was unlawful to have such lights operating

while driving on a public road. Further, once the officers observed a weapon in plain view in Ware's vehicle, they were authorized to take reasonable actions for their safety and did have probable cause to search once marijuana was observed. Thus, under the totality of the circumstances, the Court finds that even if one or more of the officers' actions here was a Fourth Amendment violation,[3] the officers acted reasonably and therefore, in any event, the exclusionary rule does not apply under these circumstances. The Constitution protects only against "unreasonable searches and seizures," and the officers did not act unreasonably here. U.S. Const. amend. IV. For these reasons, suppressing evidence in this case would not deter any known unconstitutional conduct, and any deterrent effect is greatly outweighed by the significant social costs that would be imposed by suppression. *Hudson v. Michigan*, 547 U.S. 586, 588 (2006) (holding that the social costs of letting the guilty go free, generating a flood of alleged violations, and preventing officers from engaging in reasonable conduct greatly outweigh the deterrent effect of suppression, especially where other avenues deter these violations). Therefore, suppression is not warranted here.

CONCLUSION

For the foregoing reasons, Ware's Motions to Suppress (Docs. 31 & 34) are **DENIED**.

SO ORDERED, this 9th day of September 2019.

/s/ W. Louis Sands
W. LOUIS SANDS, SENIOR JUDGE
UNITED STATES DISTRICT COURT

[3] To be clear, even if Brann was mistaken about the nature or legality of the lights on the front of Ware's truck, the Fourth Amendment tolerates reasonable mistakes. *Heien v. North Carolina*, 135 S.Ct. 530, 537 (2014). Defendant has presented no evidence, argument, or legal authority to persuade the Court that the officers here committed an unreasonable mistake as a matter of law.